UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

JENNIFER VANDERSTOK; MICHAEL Ş G. ANDREN; TACTICAL MACHINING § LLC, a limited liability company; § FIREARMS POLICY COALITION, § § § § INC., a nonprofit corporation, Plaintiffs, § § Civil Action No. 4:22-cv-00691-O v. § § MERRICK GARLAND, in his Official § capacity as Attorney General of the § **United States: UNITED STATES DEPARTMENT OF JUSTICE; STEVEN** § § DETTELBACH, in his official capacity as § Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives: § § § § BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES. § Defendants.

ORDER

On August 28, 2022, the Court ordered briefing from the parties about whether to consolidate Plaintiffs' preliminary injunction motion with a determination on the merits under Fed. R. Civ. P. 65 (Order, ECF No. 33). In their responsive cross-briefs (Pls.' Resp. Br., ECF No. 54; Defs.' Resp. Br, ECF No. 53), filed August 31, 2022, the parties object to consolidation on the grounds that any determination on the merits requires production of the entire Administrative Record (Pls.' Resp. Br. at 3–4; Defs.' Resp. Br. At 3). Plaintiffs point out that the record "may well provide insight into the agency's historic understanding of the scope of [its] regulatory jurisdiction" (Pls.' Resp. Br. at 5) (cleaned up) (quoting *Wyoming v. U.S. Dep't of Int.*, 2:15-cv-041, 2015 WL 9463708, at *1 (D. Wyo. Dec. 17, 2015). This aside, 5 U.S.C. § 706 requires courts to review "the whole record" when "determining whether agency action [exceeds] statutory

jurisdiction." *See Texas v. Biden*, 20 F.4th 928, 965 (5th Cir. 2021), *rev'd on other grounds*, 142 S. Ct. 2528 (2022) ("[the] rule applies not only to arbitrary-and-capricious review, but also to review for compliance with statutes").

Defendants indicate that compilation and production of the record will take "at least three weeks" (Defs.' Resp. Br. at 3 n.2). Plaintiffs agree that a one-month production timeline is reasonable (Pls.' Resp. Br. at 6). Accordingly, the Court **ORDERS** that Defendants compile and produce the complete Administrative Record no later than **October 24, 2022**.

SO ORDERED on this 23rd day of September, 2022.

eed O'Connor

UNITED STATES DISTRICT JUDGE